



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLINTON CAPITAL CORPORATION,

Plaintiffs,

-against-

257 WEST 21ST STREET ASSOCIATES,
INC., et al.,

Defendants.

16-MC-353 (LAK) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

This action was initiated by Clinton Capital Corporation (Clinton) on October 4, 2016, as part of Clinton's effort to collect a judgment entered more than 25 years ago, on June 27, 1995, and recorded on June 30, 1995, against 257 West 21st Street Associates, Inc., 257 West 21st Street Equities, Inc., and Christopher McNeur, in the amount of \$382,612.42. (Dkt. No. 66-11). The proceedings in this Court since 2016 have consisted primarily of motions to compel compliance with, or sanction noncompliance with, numerous nonparty subpoenas served by Clinton upon persons and entities that are associated with McNeur and that Clinton suspects of holding or hiding assets belonging to McNeur.

Included within my recent general pretrial management reference (Dkt. No. 76) are two such motions. On March 3, 2020, Clinton filed a motion (Dkt. No. 66) seeking an order compelling three nonparty entities (referred to therein as SNAE, SNLP, and EWCA) to produce additional documents in response to subpoenas dated September 19, 2019 and apparently served upon them shortly thereafter. (Dkt. No. 66-1 ¶¶ 1-4.) SNAE, SNLP, and EWCA responded to the subpoenas (*see* Dkt. Nos. 66-5 through 66-7), and EWCA produced documents (*see* Dkt. No. 66-7), but none of the subpoenaed entities has responded to the motion to compel.

The March 3, 2020 motion to compel is DENIED, without prejudice to renewal in compliance with the Federal Rules of Civil Procedure, the Local Civil Rules of the Southern District of

New York, and my individual practices, because: (a) there is no evidence in the record that the motion was ever served upon the nonparty subpoena recipients, as required by Fed. R. Civ. P. 45(d)(2)(B)(i); (b) plaintiff failed to comply with the individual practices of the Hon. Lewis A. Kaplan, United States District Judge, which among other things require that discovery disputes be raised "promptly" and limits discovery motions to four pages, including affidavits and declarations (but not including exhibits)¹; and (c) plaintiff failed to redact social security numbers and other confidential information as required by Fed. R. Civ. P. 5.2(a). (*See, e.g.*, Dkt. No. 66-2, at ECF page 5.)

On November 3, 2020, Clinton filed a motion (Dkt. No. 75), seeking an order compelling ten additional nonparty entities to produce documents in response to subpoenas dated December 2, 2019 and apparently served upon the nonparty entities shortly thereafter. The subpoenaed entities responded to the subpoenas (*see* Dkt. Nos. 75-13 through 75-22), and some of them produced documents (*see* Dkt. No. 75-2 ¶¶ 24-25, 51; Dkt. No. 75-40), but none of the subpoenaed entities has responded to the motion to compel.

The November 3, 2020 motion to compel is DENIED, without prejudice to renewal in compliance with the Federal Rules of Civil Procedure, the Local Civil Rules of the Southern District of New York, and my individual practices, because: (a) there is no evidence in the record that the motion was ever served upon the nonparty subpoena recipients, as required by Rule 45(d)(2)(B)(i); (b) plaintiff failed to comply with the individual practices of Judge Kaplan,²; and

¹ Plaintiff filed a 2-page notice of motion, an 8-page affidavit with 23 exhibits, some of them lengthy, and a 21-page memorandum of law, for a total filing running to 591 pages.

² Plaintiff filed a 2-page notice of motion, a 12-page affidavit with 38 exhibits, some of them lengthy, and a 22-page memorandum of law, for a total filing running to 1158 pages.

(c) plaintiff failed to redact social security numbers and other confidential information as required by Fed. R. Civ. P. 5.2(a). (*See, e.g.*, Dkt. No. 75-3, at ECF page 10.)

The Clerk of Court is respectfully directed to close the motions at Dkt. Nos. 66 and 75 and modify the viewing level of both motions (including all exhibits thereto) to *applicable parties*, permitting access only by the Court, plaintiff Clinton Capital Corporation, and defendant Christopher McNeur (defendants 257 West 21st Street Associates, Inc. and 257 West 21st Street Equities, Inc. have not appeared in this matter).

Dated: New York, New York
December 21, 2020

SO ORDERED.

A handwritten signature in blue ink, appearing to read 'Barbara Moses', is written over a horizontal line.

BARBARA MOSES
United States Magistrate Judge